

Part III - Administrative, Procedural, and Miscellaneous

United States Income Tax Treaties That Meet the Requirements of Section 1(h)(11)(C)(i)(II)

Notice 2006-101

1. SUMMARY

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27, 117 Stat. 752) (the “2003 Act”) was enacted on May 28, 2003. Subject to certain limitations, the 2003 Act generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a “qualified foreign corporation” is subject to tax at the reduced rates applicable to certain capital gains. A qualified foreign corporation includes certain foreign corporations that are eligible for benefits of a comprehensive income tax treaty with the United States that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information provision. On October 20, 2003, the Service published Notice 2003-69, 2003-2 C.B. 851, which contains a list of the U.S. tax treaties that met these requirements at that time. This notice updates the list of U.S. tax treaties that meet these requirements to reflect new U.S. income tax treaties and protocols that have entered into force since the publication of Notice 2003-69.

2. ANALYSIS

Section 1(h)(1) of the Internal Revenue Code (the “Code”) generally provides that a taxpayer’s “net capital gain” for any taxable year will be subject to a maximum tax rate of 15 percent (or 5 percent in the case of certain taxpayers). The 2003 Act added section 1(h)(11), which provides that net capital gain for purposes of section 1(h) means net capital gain (determined without regard to section 1(h)(11)) increased by “qualified dividend income.” Qualified dividend income means dividends received during the taxable year from domestic corporations and “qualified foreign corporations.” Section 1(h)(11)(B)(i). Subject to certain exceptions, a qualified foreign corporation is any foreign corporation that is either (i) incorporated in a possession of the United States, or (ii) eligible for benefits of a comprehensive income tax treaty with the United States that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information program (the “treaty test”). Section 1(h)(11)(C)(i).

A foreign corporation that does not satisfy either of these two tests is treated as a qualified foreign corporation with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States. Section 1(h)(11)(C)(ii). See Notice 2003-71, 2003-2 C.B. 922, for the definition, for taxable years beginning on or after January 1, 2003, of “readily tradable on an established securities market in the United States.”

A qualified foreign corporation does not include any foreign corporation that for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297). Section 1(h)(11)(C)(iii). A dividend from a qualified foreign corporation is also subject to

the other limitations in section 1(h)(11). For example, a shareholder receiving a dividend from a qualified foreign corporation must satisfy the holding period requirements of section 1(h)(11)(B)(iii).

The appendix to this notice sets forth the current list of U.S. income tax treaties that meet the requirements of section 1(h)(11)(C)(i)(II). Three U.S. income tax treaties do not meet the requirements of section 1(h)(11)(C)(i)(II). The tax treaties with Bermuda and the Netherlands Antilles are not comprehensive income tax treaties within the meaning of section 1(h)(11). The U.S.-U.S.S.R. income tax treaty, which was signed on June 20, 1973, and currently applies to certain former Soviet Republics, does not include an information exchange program.

At the time Notice 2003-69 was published, the income tax treaty with Barbados was determined not to be satisfactory for purposes of section 1(h)(11) because of concern that the treaty may have operated to provide benefits that were intended to mitigate or eliminate double taxation in cases where there was no risk of double taxation. See, e.g., H.R. Rep. 108-126, 108th Cong., 1st Sess., at 42 (2003) (conference report on the 2003 Act). On July 14, 2004, the United States and Barbados signed a Second Protocol to the U.S.-Barbados income tax treaty (the “Second Protocol”), which entered into force on December 20, 2004. The Second Protocol amended the U.S.-Barbados income tax treaty by substituting a new limitation on benefits article that reflected developments in U.S. treaty policy and was designed to eliminate in particular the availability of certain inappropriate benefits under the existing treaty. Following the changes made by the Second Protocol, the income tax treaty with Barbados has been

determined to be satisfactory for purposes of section 1(h)(11).

The updated list in the appendix to this notice also contains two U.S. income tax treaties that entered into force after the publication of Notice 2003-69: the U.S. income tax treaties with Sri Lanka (which entered into force on July 12, 2004) and Bangladesh (which entered into force on August 7, 2006).

Treasury and the IRS intend to update this list, as appropriate. Situations that may result in changes to the list include the entry into force of new income tax treaties and the amendment or renegotiation of existing tax treaties. Further, Treasury and the IRS continue to study the operation of each of our income tax treaties, including the implications of any change in the domestic laws of the treaty partner, to ensure that the treaty accomplishes its intended objectives and continues to be satisfactory for purposes of this provision. It is anticipated that any changes to the list of income tax treaties that meet the requirements of section 1(h)(11)(C)(i)(II) will apply only to dividends paid after the date of publication of the revised list.

Finally, in order to be treated as a qualified foreign corporation under the treaty test, a foreign corporation must be eligible for benefits of one of the U.S. income tax treaties listed in the Appendix. Accordingly, the foreign corporation must be a resident within the meaning of such term under the relevant treaty and must satisfy any other requirements of that treaty, including the requirements under any applicable limitation on benefits provision.

3. EFFECTIVE DATE

This notice is effective with respect to Bangladesh for dividends paid on or after

August 7, 2006. This notice is effective with respect to Barbados for dividends paid on or after December 20, 2004. This notice is effective with respect to Sri Lanka for dividends paid on or after July 12, 2004. This notice is effective with respect to all other U.S. income tax treaties listed in the Appendix for taxable years beginning after December 31, 2002.

4. EFFECT ON OTHER DOCUMENTS

Notice 2003-69 is amplified and superseded.

5. CONTACT INFORMATION

The principal author of this notice is Ana C. Guzman of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Guzman at (202) 622-3880 (not a toll-free call).

APPENDIX
U.S. INCOME TAX TREATIES SATISFYING THE REQUIREMENTS OF
SECTION 1(h)(11)(C)(i)(II)

Australia	Germany	Lithuania	Slovenia
Austria	Greece	Luxembourg	South Africa
Bangladesh	Hungary	Mexico	Spain
Barbados	Iceland	Morocco	Sri Lanka
Belgium	India	Netherlands	Sweden
Canada	Indonesia	New Zealand	Switzerland
China	Ireland	Norway	Thailand
Cyprus	Israel	Pakistan	Trinidad and Tobago
Czech Republic	Italy	Philippines	Tunisia
Denmark	Jamaica	Poland	Turkey
Egypt	Japan	Portugal	Ukraine
Estonia	Kazakhstan	Romania	United Kingdom
Finland	Korea	Russian Federation	Venezuela
France	Latvia	Slovak Republic	